



**Docket LR08019
Order LR09-01**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Todd Munn against Order
No. LD08-434 of the Director of Residential
Rental Property, dated November 24, 2008.

BEFORE THE COMMISSION
on Monday, the 5th day of January, 2009.

Maurice Rodgerson, Chair
Brian J. McKenna, Vice-Chair

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Todd Munn against Order
No. LD08-434 of the Director of Residential
Rental Property, dated November 24, 2008.

Order

On December 8, 2008, the Commission received a Notice of Appeal filed by the Appellant Todd Munn (Mr. Munn). Mr. Munn appealed Order No. LD08-434 issued by the Office of the Director of Residential Rental Property (the Director) on November 24, 2008.

At issue is whether Mr. Munn may appeal Order LD08-434 pursuant to the right of appeal under the *Rental of Residential Property Act* (the *Act*). Subsection 25(1) of the *Act* reads as follows:

25. (1) Any party to a decision or order of the Director, if the party has appeared or been represented at the hearing before the Director, may appeal therefrom by serving on the Commission, within twenty days after receipt of the decision or order of the Director, a notice of appeal in the form prescribed by regulation. [Emphasis added]

The Commission has had the opportunity to review the file provided by the Director.

The Commission finds that Mr. Munn was not present at the hearing before the Director held on August 12, 2008. Further, the Commission finds that Mr. Munn was not represented at the hearing before the Director.

Subsection 25(1) of the *Act* provides a conditional right of appeal. The right to appeal is available only if the appellant was present or was represented at the hearing before the Director.

In his Notice of Appeal, Mr. Munn indicated that the rental officer did not call to hold a hearing over the telephone. In response, the Director filed an affidavit from the rental officer. The Commission provided Mr. Munn with a copy of the affidavit and invited Mr. Munn to file a written response with a deadline of 4:30 p.m. Monday, December 22, 2008. Mr. Munn attempted to email his response the day after the deadline; however the Commission did not receive this email. Mr. Munn then faxed the body of the email to the Commission on Monday December 29, 2008.

In his response filed after the deadline, Mr. Munn asserted that he had an agreement with the Director for him to be called if he is not present at a hearing and for the hearing to be conducted over the telephone. However, Mr. Munn did not provide any objective evidence that such an agreement exists.

The December 16, 2008 affidavit of Shayne Hogan, rental officer, states in part that Mr. Hogan had no contact with Mr. Munn, prior to the August 12,

2008 hearing, requesting participation by telephone of Docket 08-261 Milligan v. Munn. The affidavit also noted that there is no standing arrangement between Mr. Munn and Mr. Hogan to contact Mr. Munn to participate in a rental hearing by telephone.

There is no evidence before the Commission that there was an actual agreement between the Director and Mr. Munn requiring the Director or a rental officer to call Mr. Munn upon his failure to attend a hearing and offer to allow him to participate by telephone.

As Mr. Munn was neither present at the August 12, 2008 hearing before the Director nor represented at that hearing, subsection 25(1) of the **Act** does not provide him with a right of appeal and this appeal is hereby dismissed.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*:

IT IS ORDERED THAT

1. The appeal is hereby dismissed.
2. Order LD08-434 issued by the Office of the Director of Residential Rental Property on November 24, 2008 remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 5th day of January, 2009.

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

(Sgd.) *Brian J. McKenna*

Brian J. McKenna, Vice-Chair

NOTICE

Sections 26.(2), 26.(3), 26.(4) and 26.(5) of the ***Rental of Residential Property Act*** provide as follows:

26.(2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.

(3) The rules of court governing appeals apply to an appeal under subsection (2).

(4) Where the Commission has confirmed, reversed or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.

(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.